IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE

WRIT PETITION NO. 8297 OF 2006

P. Carlton & Co. & ors..... Petitioner

versus

Syndicate Bank & ors..... Respondent.

Mr. D.D.Madon with R.M.Jaykar & Ms. Dimple Mehta i/b. M/s. Jayakars for the petitioner
Ms. Manisha Patil i/b. M/s. Bhave & CO. for Respondent no.1.

CORAM; A.P. DESHPANDE, J.
DATED; 04TH AUGUST, 2007

P.C.;

1. By the instant writ petition, the petitioners questions the legality and validity of an order passed by the Estate Officer, dated 5-9-2006 which directs the petitioner to proceed to lead evidence first in point of time. The record reveals that the petitioner no.1 was the tenant of the respondent whereas the petitioner nos.2 to 9 are allegedly sub tenants in the premises. After termination of tenancy of the petitioner no.1, proceedings are initiated against all the petitioners terming them to be in unauthorised occupation of the premises before the Estate Officer under the provisions of Public Premises (Eviction of Unauthorised Occupants) Act 1971. The question raised

in this petition is about the authority of the Estate Officer to direct the occupants to lead evidence first in point of time, is already adjudicated by me in W.P.No.611/07. I have upheld an identical order directing the occupants to lead evidence first. For the reasons recorded in the order disposing of the said writ petition, the contention of the present petitioners stands rejected.

2. The other order which is impugned, yet again passed by the Estate Officer is refusing to grant stay of the proceedings initiated in the year 2005. The objection raised before the Estate Officer by the petitioners is to the effect that already proceedings initiated for the same purpose in the year 1994 are still pending and hence the proceedings could not have been initiated afresh in the year 2005. In a reply filed by the respondent bank before the Estate Officer, it is clearly stated that the respondent bank is "hereby withdrawing the earlier application filed in the year 1994". The learned counsel appearing for the respondent submits that proceedings initiated in the year 1994 stands withdrawn and hence there is no impediment in the way of respondent to initiate present proceedings in the year 2005. It is then submitted that the provisions of Civil Procedure Code are not applicable to the summary proceedings under

the Public Premises Act and even on this ground, the proceedings initiated in the year 2005 cannot be stayed.

3. It is next submitted by the learned counsel for the petitioner that earlier the bank had filed a suit before the Small Causes Court for eviction and possession and an application was moved under Order 23 of CPC for withdrawal of the suit with liberty to initiate proceedings under the Public Premises act and the said permission was refused. Perusal of the order passed by the Small Causes Court reveals that as the bank was intending to file proceedings under the Public Premises Act, Order 23 had no application and hence no permission to initiate the proceedings was granted. True it is that permission of the court under Order 23 would be required only when the plaintiff proposes to file a fresh suit based on same cause of action. As the bank was not proposing to file a fresh suit but was intending to initiate proceedings under the Public Premises Act, leave sought for under Order 23 was itself misconceived.

4. Perused the impugned orders. The same does not suffer from any patent illegality. The final order to be passed by the Estate Officer is an appellable order. Leaving all questions raised in this petition

open to be agitated in the appeal against the final decision, this writ petition is summarily dismissed.

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